Richard & Mary Hartzen 1 4299 NE 29thSt Redmond OR 97756 2 3

FILED 10 AUG 24 16/30 USDC-ORE

UNITED STATES DISTRICT COURT DISTRICT OF OREGON

Richard & Mary Hartzell

Case # 6:10-CV-6231-HO

Plaintiff,

VS.

RESPONSE TO RULE 12 MOTION

U.S. Bank, NA

Defendant

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Date: 08/24/2010

- (1) The Plaintiff, in her Original Petition, plead that Defendant charged false fees as stipulated to Plaintiff as listed on the HUD 1 Settlement Statement, included as Exibit 1. Plaintiff specifically plead that Defendant, at the time of settlement of the contract, Defendant failed to provide documentation to establish that said fees were not included in those fees expressly addressed by the Real Estate Settlement Procedures Act as forbidden to be charged to Plaintiff at settlement.
- (2) Plaintiff further alleged that Defendant, acting in concert and collusion with the loan broker, toward the perpetration of a carefully contrived connivance, provided the amounts listed in the HUD 1 Settlement Statement, to the loan broker as an undisclosed yield spread premium. Said undisclosed yield spread premium is alleged to be in addition to the one percent loan origination fee, charged to Plaintiff, as allowed by law. Plaintiff alleged that said payment to the broker of undisclosed yield spread premium was a predicate act intended to improperly influence loan broker to misrepresent facts to Plaintiff, to give partial disclosure of those facts which would appear favorable to the intent of the loan broker, while failing to give full disclosure of other facts that would not seem favorable to the contract.
- (3) By the above, Plaintiff stated a claim for which recovery could be had, and therefore, Defendant's motion to dismiss is frivolous. Plaintiff moves the court to deny Defendant's PRELIMINARY INJUNCTION 1 of 3

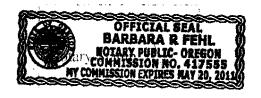
- pleading, or, in the alternative, treat Defendant's pleading as a request for more definite statement, in which case, Plaintiff will provide a more definite statement as requested.
- (4) Further, Plaintiff moves the court to order sanctions against Defendant for filing a frivolous pleading and for failing to speak with candor to the court as Defendant is totally inept or acted with deliberate intent to improperly influence the court with false pleadings.

Respectfully Submitted,

39 Richard Hartzell

PRELIMINARY INJUNCTION

50	VERIFICATION
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53 54	We, Richard & Mary Hartzell, do swear and affirm that all statements made herein are true and accurate, in all respects, to the best of our knowledge.
55 56 57 58 59 60	Richard & Mary Hartzell 4299 NE 29thSt Redmond OR 97756 SWORN TO AND SUBSCRIBED BEFORE ME, Daniel A. Jehl, by Richard and Mary Hartzell, on the audie day of August, 2010, which witnesses my hand and seal of office.
52	Q 10000 0 A 101
53	Barbara R. Jehl
54	NOTARY PUBLIC IN AND FOR
55	THE STATE OF OREGON



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NAME AND ADDRESS OF BORROWER:		NAME	AND ADDRES	SOFIEN	INEP-			
RICHARD K HARTZELL AND		TO COME	. AND ADDRES	o or mr	MACIN.			
MARY A HARTZELL 2511 NE YUCCA AVE REDMOND, OR 97756			US BANK NATIONAL ASSOCIATION NORTH DAKOTA 4325 17TH AVE SOUTHWEST FARGO, NORTH DAKOTA 58103					
PROPERTY LOCATION:	<u> </u>	SETTI	EMENT AGEN	T: AM	ERICAN TITLE INC			
2511 NE YUCCA AVE		PLACE	E OF SETTLEM	ENT: 110	10 BURDETTE STREET			
REDMOND, OR 97756 DESCHUTES COUNTY				OM	IAHA NE 68164-1010			
DESCRIPTES COUNTY			SETTLEMENT DATE:		October 4, 2007 Disb		urse:10/10/07	
		LOAN	NUMBER:		0586653			
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804, Credit Report to US BANK		POC \$15.00		1503.		┪	-	
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Borrower RICHARD K HARTZELL	AMERICAN TITLE INC.
Certified to be a true copy. MARY A HARTZELL	Settlement Agent

Form HUD-1A (2/94) ref. RESPA

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EXHIBIT 1